IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1311 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVINDBHAI DIPABHAI NAYAK

Versus

SHIVABHAI SHANKARBHAI SOLANKI

Appearance:

MR MTM HAKIM for Appellants No. 1-2

..... for Respondent No. 1-2

MR MAULIK J SHELAT for Respondent No. 3

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 28/07/2003

ORAL JUDGEMENT

1. Admit. Mr. Maulik J. Shelat waives notice of service for respondent no.3. By consent, the First Appeal is taken up for immediate hearing.

2. The minor son, aged about 5 years, of the appellant no.2, who is the mother of the child, was killed in a vehicular accident caused by the negligent driving of the motorcycle bearing No.GCD - 6397 by respondent no.1. The vehicle belonged to respondent no.2 and it was insured with the Oriental Insurance Company the respondent no.3. The M.A.C. Tribunal (Auxi), Vadodara, after recording the finding that the driver was guilty of negligence, by judgment and order dated 30th June, 1998 passed in M.A.C.P. No.1295 of 1993, awarded Rs.31,000/- with interest at the rate of 12% from the date of application to appellant no.2. The appellant no.1 is the stepfather.

3. The appellants have filed this appeal for enhancement of compensation. The learned counsel for the appellants submitted that an additional lumpsum award of Rs.26,000/-, inclusive of interest and cost, may be made. The learned counsel for the respondent no.3 - insurance company submitted that the assessment of compensation made by the Tribunal was just and proper and there was no scope for awarding any additional amount and, in any case, not more than Rs.20,000/- may be awarded as additional compensation inclusive of interest and cost. In the circumstances of the case, I am of the opinion that, having regard to the facts and circumstances of the case, it will be appropriate to award an additional lumpsum amount of Rs.25,000/- inclusive of cost and interest. The respondent no.3 shall deposit the said amount in the Tribunal within eight weeks from today. The Tribunal shall, thereafter, make appropriate orders for disbursement/investment of the amount deposited in favour of the appellant no.2/original applicant no.2 Kashiben Govindbhai Nayak. The appeal is accordingly allowed to the aforesaid extent. No order as to costs.

(M.C. Patel, J.)
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